IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4440 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAKBHAI JAIKISHAN RANA FRIEND OF DETENU BHADRESH

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for learned advocate Mr.N.M.Kapadia on behalf of the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 29-5-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India by one Mr.Dipakbhai Jaikishna Rana - the friend of the detenu.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that a prohibition case vide C.R. No : 50,84 / 99 was registered against the detenu at Varachha police station for the offence made punishable under Bombay Prohibition Act and he was arrested on 18th March, 199 That the said case is pending for trial in the Court. Furthermore, two witnesses on assurance of their anonymity have given their statement vide date 22-5-99 against the detenu regarding the bootlegging activities and have referred to incidents alleged to have taken place on 18-4-99 and 9-5-99 respectively. That on the basis of the said material, the respondent No.1 - the Commissioner of Police, Surat as the detaining authority has come to the conclusion that the detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the detenu from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the aspect of claiming of cancellation of bail though available under Section 437(5) of the CrPC has not been considered by the detaining authority which has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court

(Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority himself has observed in the grounds of detention that the detenu having released on bail, is likely to continue his anti social activities. However, nowhere it is stated wherein, an attempt has been made to claim cancellation of bail on receipt of the information that he islikely to continue his bootlegging activities. Under these circumstances, it is difficult to uphold the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-5-99 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu is hereby quashed and set aside. The detenu - BHADRESH SHANTILAL MEHTA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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